

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHANNON MARIE KIMBLE,

Defendant-Appellant.

---

UNPUBLISHED

September 11, 2003

No. 239698

Allegan Circuit Court

LC No. 01-011952-FH

Before: Cooper, P.J., and Fitzgerald and Kelly, JJ.

MEMORANDUM.

Defendant appeals as of right her jury trial conviction of breaking and entering, MCL 750.110 for which the trial court sentenced her as a second habitual offender, MCL 769.10 to nine months' imprisonment and three years' probation. We affirm.

Before trial, defendant's court-appointed attorney moved for a *Walker*<sup>1</sup> hearing to suppress defendant's confession to the police. But the attorney did not pursue the motion to suppress and, instead, acquiesced in the trial court's order denying the motion. Two days later, a second court-appointed attorney was substituted. At trial, the defense theory was that defendant fabricated the confession in an effort to protect herself from her boyfriend, who committed the crime.

On appeal, defendant contends she was denied effective assistance of counsel when her first attorney did not pursue the motion to suppress and her second attorney failed to "renew" the motion. We disagree.

Our review of this issue is limited to errors evident in the existing trial record because defendant failed to preserve this issue for our review by moving for a new trial or evidentiary hearing in the trial court. *People v Knapp*, 244 Mich App 361, 385; 624 NW2d 227 (2002). To establish ineffective assistance of counsel, defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different and the result of the proceedings was

---

<sup>1</sup> *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

fundamentally unfair or unreliable. *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001).

“[T]he sole purpose of the *Walker* hearing is to determine the fact of voluntariness” with regard to statements made by defendants. *People v Shelton*, 150 Mich App 718, 724; 389 NW2d 159 (1986). Defendant’s first attorney’s decision not to pursue the motion to suppress was a matter of trial strategy that we will not second guess. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999). At trial, the defense theory was built upon the reason defendant gave the fabricated confession. Defendant’s second court-appointed counsel was not ineffective for failing to “renew” the motion to suppress, because the trial court had already entered an order denying the motion. “[T]rial counsel is not required to advocate a meritless position.” *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

Affirmed.

/s/ Jessica R. Cooper  
/s/ E. Thomas Fitzgerald  
/s/ Kirsten Frank Kelly